

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JUNE 29 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JOSEPH BENITEZ LEON,

Appellant.

2 CA-CR 2006-0123

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20052284

Honorable Howard Hantman, Judge
Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By Frank P. Leto

Tucson
Attorneys for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 A jury found appellant Joseph Benitez Leon guilty of two class four felonies:
aggravated driving under the influence of an intoxicant (DUI) while his driver's license was

suspended or revoked and extreme DUI while his license was suspended or revoked. The trial court placed him on probation for five years and ordered him to serve four months in prison as a condition of probation. In the single issue raised on appeal, Leon contends he was denied a fair trial and a meaningful opportunity to present a defense by the trial court's refusal to postpone his trial for four months so he could obtain copies of his medical records from the United States Navy, from which he had been discharged for medical reasons.

¶2 Leon was indicted in June 2005 for offenses that occurred in January of that year. After one substitution of counsel, trial counsel made her first appearance in the case at a hearing in September. At a pretrial conference on November 18, the court set a trial date of January 4, 2006, in this matter and January 18 in a second DUI case pending against Leon. On December 9, Leon filed a motion to continue the trial dates in both cases. The motion stated:

While in the Navy, Mr. Leon was hospitalized and diagnosed with Obsessive-Compulsive Disorder, Depression and Anxiety. Mr. Leon was honorably discharged from the Navy in October of 2004. He was arrested twice for Aggravated DUI in January of 2005 and April of 2005. At the time, he was not under psychiatric care. However, his behavior during his arrest, including his performance on field sobriety tests and interactions with police officers may have been a manifestation of his mental illness.

Defense counsel has requested Mr. Leon's medical records from the Department of Defense and Naval Hospital in Yokosuma, Japan. She has been informed that these medical records can take up to 4 months to obtain. A careful consideration of these records [is] necessary to effectively represent Mr. Leon[;] therefore, the defendant respectfully

requests a continuance of his trials currently set for Jan[uary] 4 and Jan[uary] 18, 2006.

Counsel reportedly requested the records from the Navy on November 27, 2005.

¶3 At oral argument in December on the motion to continue, the court asked Leon’s counsel what was in the medical records. Counsel tacitly suggested the information they contained about Leon’s mental health would corroborate her “belie[f] that some of the behaviors that he manifested during the stop and the field sobriety tests[,] rather than being an indication of [his being] under the influence, [were] an indication of his mental health.” When the court observed that defense counsel had not sought a mental status evaluation pursuant to Rule 11, Ariz. R. Crim. P., 16A A.R.S., she stated Leon was “stable now,” and she did not believe a Rule 11 examination was warranted. The trial court refused to postpone the trial for four months, finding the medical records “not . . . relevant to anything, frankly, without a better showing than you’ve gotten so far.”

¶4 A different judge presided over the trial, and defense counsel renewed the motion to continue before jury selection began. Counsel argued the medical records were “relevant to the question of whether Mr. Leon was impaired by alcohol or impaired by mental illness.” Elaborating, counsel stated:

It’s not a diminished capacity defense in any way. . . . [B]ased on the medical records, we may be able to say that the manner in which Mr. Leon performed on the field sobriety test, his demeanor, his ability to understand the instructions, his—the way he interacted with the police officers may, in fact, have been affected by his mental illness

Evidently sharing his predecessor's view that Leon's medical records were irrelevant to the DUI charges, the trial court referred defense counsel to *State v. Mott*, 187 Ariz. 536, 541, 931 P.2d 1046, 1051 (1997), in which our supreme court upheld the established Arizona rule barring "evidence of a defendant's mental disorder short of insanity either as an affirmative defense or to negate the *mens rea* element of a crime." Thus, the court again denied Leon's motion to continue.

¶5 Rule 8.5(b), Ariz. R. Crim. P., 16A A.R.S., provides that a trial date shall be continued "only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice." The decision to grant or deny a continuance rests in a trial court's discretion. *State v. Amarillas*, 141 Ariz. 620, 622, 688 P.2d 628, 630 (1984). We will not disturb a ruling unless the court clearly abused its discretion and prejudice resulted. *Id.*

¶6 The state produced substantial evidence that Leon had been driving while intoxicated and impaired. The police officer who had observed his driving and stopped him testified that Leon had bloodshot, watery eyes and an odor of intoxicants on his breath. When the officer asked if he had been drinking, Leon admitted that he had and answered that he felt the alcohol he had drunk had affected his driving. When asked to step out of his vehicle, Leon shut his hand in the door as he attempted to close it.

¶7 The officer testified Leon's body swayed slightly while he stood, his speech was somewhat slurred, and he exhibited six of six cues on the horizontal gaze nystagmus test

the officer administered. When Leon attempted to perform a walk-and-turn field sobriety test, he could not maintain his balance in the starting heel-to-toe position. After he “fell off the line” three times, Leon stated, “I can’t do this. I know I’m too drunk.” After he was arrested for DUI, samples of his breath were tested. They revealed alcohol concentration levels of .193 and .199.

¶8 Given the overwhelming evidence of Leon’s intoxication and the lack of any concrete showing of prejudice to the defense, the trial court did not abuse its discretion in refusing to postpone the trial for four months to allow Leon to obtain his medical records.¹ *See Amarillas*, 141 Ariz. at 622, 688 P.2d at 630.

¶9 Affirmed.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Judge

PHILIP G. ESPINOSA, Judge

¹For these reasons, we need not address whether the trial court correctly analyzed the relevance of the medical records under *State v. Mott*, 187 Ariz. 536, 931 P.2d 1046 (1997).